



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of K.T., Department of
Labor and Workforce Development

Discrimination Appeal

CSC Docket No. 2021-688

ISSUED: JULY 1, 2021 (SLD)

K.T., a Chief, Bureau of Inspection and Enforcement,¹ with the Department of Labor and Workforce Development (DOL), appeals the determination of the Assistant Commissioner, DOL, stating that the appellant violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

On December 7, 2018 the Office of Diversity and Compliance (ODC) received a complaint alleging that the appellant, a Caucasian male, had harassed a Hispanic female employee on the basis of disability, national origin, race and sex/gender, and had retaliated against that employee in violation of the State Policy. Specifically, the employee alleged that the appellant had removed some of her job duties and assigned them to predominately white supervisors in a higher title due to the employee being Hispanic. The employee also alleged that her ergonomic desk and work station had been tampered with. The employee maintained that the appellant’s alleged actions were also in retaliation for a 2015 discrimination complaint against the appellant that the employee had been involved in. As a result, the ODC interviewed several witnesses, including the appellant, and reviewed various documents. Thereafter, the Assistant Commissioner, DOL issued a determination letter to the appellant finding that he had retaliated against the employee in violation of the State Policy. Consequently, the appellant was issued an official written reprimand.²

¹ At the time of the complaint, the appellant was serving in the title of Assistant Chief, Wage and Hour Compliance. He was provisionally appointed, pending promotional examination procedures, to the title of Chief, Bureau of Inspection and Enforcement, effective February 27, 2021.

² It is noted that a departmental hearing was scheduled on this matter.

Upon the appellant's initial appeal, the appellant was informed in a March 5, 2021 letter from the Division of Appeals and Regulatory Affairs (DARA) staff that pursuant to *N.J.A.C.* 4A:7-3.2(n), where a violation has been substantiated, and disciplinary action recommended, the party charged may appeal using the disciplinary appeal procedures set forth in *N.J.A.C.* 4A:2-2 and 3. However, the appellant requested that this matter be forwarded to the Civil Service Commission (Commission) for a determination.

On appeal, the appellant disputes the findings of the investigation and argues that the determination letter indicated that he could appeal the determination to the Commission and that the March 5, 2021 letter was "confusing" and he appears to be the only one that followed instructions.

In response, the ODC argues that as discipline had been recommended in this matter, pursuant to *N.J.A.C.* 4A:7-3.2(n), the appellant was required to appeal this matter through the disciplinary appeal procedures set forth in *N.J.A.C.* 4A:2-2 and 3. Furthermore, the ODC notes that the appellant had appealed the recommended discipline, and was provided with a disciplinary hearing on this matter.

CONCLUSION

N.J.A.C. 4A:7-3.2(n) provides that in a case where a violation of the State Policy has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Commission . . . within 20 days of receipt of the final letter of determination by the State agency head or designee. *N.J.A.C.* 4A:7-3.2(n)3 provides that in a case where a violation of the State Policy has been substantiated **and disciplinary action recommended**, the procedures set forth in *N.J.A.C.* 4A:2-2 and 3 for the appeal of disciplinary action may be followed.

In this matter, the appellant received an official written reprimand based on a finding that he had violated the State Policy. Thus, *N.J.A.C.* 4A:7-3.2(n)3 is applicable since a disciplinary action has been recommended. The Commission and its predecessor, the Merit System Board (MSB), has previously decided that an underlying discrimination matter cannot be reviewed by this agency when the disciplinary action is also the subject of the departmental hearing. The rule is clear that where a violation is substantiated, the avenues of appeal are based specifically on whether discipline is recommended. Moreover, in *Matter of M.M.* 463 *N.J. Super.* 128 (App. Div. 2020), the Appellate Division upheld the Commission's decision that, pursuant to *N.J.A.C.* 4A:7-3.2(n), that an appellant who was found to have violated the State Policy where disciplinary action was recommended could not appeal directly to the Commission and may only appeal using the procedures set forth in *N.J.A.C.*

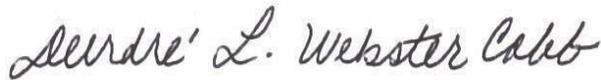
4A:2-2 and -3. Accordingly, in this matter, the appellant does not have the right to file an appeal of the finding of discrimination against him to the Commission.³

ORDER

Therefore, it is ordered that this appeal be dismissed for lack of jurisdiction.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



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³ Although the ODC may recommend administrative action after substantiating the State Policy violation, it does not have the authority to actually issue disciplinary action. Rather, it is the appointing authority that actually issues the disciplinary action if it determines that such action is appropriate. In other words, it is at the appointing authority's discretion to issue the disciplinary action. When disciplinary action is issued by the appointing authority, the appellant must appeal pursuant to the procedures set forth in *N.J.A.C.* 4A:2-2 and 3. Moreover, as the discipline occurred while the appellant was in the title of Assistant Chief, Wage and Hour Compliance, a title covered by the Communications Workers of America (CWA), any further appeal of the discipline must follow the procedures proscribed under the negotiated agreement between the State of New Jersey and the CEA regarding disciplinary actions.